

BEFORE THE
DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS
OF THE STATE OF HAWAII

In the Matter of the Application)
of)
TIME WARNER ENTERTAINMENT)
COMPANY, L.P.)
For Transfer and Amendment of the)
Cable Franchise Held By TCI of)
Hawaii, Inc.)
_____)

DECISION AND ORDER NO. 241

I. Introduction.

The State has accepted Time Warner Entertainment Company, L.P.'s application for transfer and amendment of the cable franchise held by TCI of Hawaii, Inc.

The cable franchise held by TCI of Hawaii, Inc.¹ covers the following areas: the island of Maui (except Lahaina) census tracts 301, 302, 303.01, 303.02, 304.01, 304.02, 305, 306, 307, 308, 309, 310, 311.01, 311.02, 311.03, 312 and 313; the island of Molokai census tracts 317, 318 and 319; the island of Lanai census tract 316; the Ka'u area of the island of Hawaii census tract 212; and the Hawaii Kai area of the island of Oahu census tracts 1.02, 1.04, 1.05, 1.06, 1.07 and 1.08. TCI of Hawaii, Inc.'s cable franchise expires on December 31, 2000.

Pursuant to that certain Asset Exchange Agreement dated as of November 25, 1998 ("Asset Exchange Agreement"), by and among Various Affiliates of TCI Communications, Inc. ("TCI") and Time Warner Entertainment Company, L.P. and Time Warner Cable of Avalon, L.P., TCI and TWE have agreed to, among other things, exchange certain assets including cable systems and franchises. For example, TCI will exchange its cable systems and franchises referred to therein as "TCI's System

¹ By Decision and Order No. 239, the Director approved TCI and AT&T Corp.'s application for change in control from TCI to AT&T of the cable franchise held by TCI of Hawaii, Inc.

Name" -- Hawaii; Racine, Wisconsin; Biddeford, Maine; Golf Manor, Ohio; Warren, Ohio; and Middletown, Ohio, to TWE in exchange for TWE's franchises and systems referred to therein as "TWE's System Name" -- Avalon, New Jersey; Champaign/Urbana, Illinois; Danville, Illinois and Altamont, Indiana; DeKalb/Rochelle, Illinois; and Eastern Pennsylvania.

In addition, the Asset Exchange Agreement provides that obligations and liabilities incurred by TCI of Hawaii prior to closing will remain with TCI of Hawaii including any obligation, liability or claims relating to or arising pursuant to taxes (including franchise fee payments) and refunds of rates, charges or late fees. TWE will be responsible for obligations and liabilities incurred after closing and arising out of TWE's ownership of TCI of Hawaii systems or the conduct of business through such cable systems including late fees that may be charged to subscribers by TWE.

The closing of the Asset Exchange Agreement is anticipated to occur sometime prior to May 30, 1999. One of the conditions precedent for closing of the Asset Exchange Agreement is TWE and TCI obtaining the required consents from appropriate governmental authorities on the subject transfer.²

Organizationally, the general partners of Time Warner Entertainment Company, L.P. ("TWE") are American Television & Communications Corporation, which holds a 25.77% interest, and Warner Communications, Inc., which holds a 37.50% interest. Limited partners include MediaOne Group, Inc. (25.51% interest), Time Warner Companies, Inc. (5.61% interest), and TW/TAE Inc. (5.61% interest). Time Warner Companies, Inc., which holds a 92.20% ownership interest in American Television & Communications and 100% ownership interest in Warner Communications, Inc., is a wholly owned subsidiary of Time Warner, Inc.

Once owned or acquired by TWE, cable systems in Hawaii are designated as a part of TWE-Time Warner Cable-Hawaii Division. TWE's Cable Management Committee governs the business and operations of the cable systems.³ The Cable Management Committee is comprised of six voting members (three designated by MediaOne and the remaining three are designated by TWE). According to TWE, management oversight and responsibility of the cable systems in Hawaii have been assigned to Oceanic Cable. However, a majority of the members of the Management Committee must approve certain transactions, among other things, the making or

² The Federal Communications Commission approval of FCC CARS license transfers from TCI of Hawaii to Time Warner Entertainment Company, L.P. is required.

³ Except to the extent delegated to the Cable Management Committee, the business and affairs of TWE are managed under the direction of a board of representatives, who are appointed by subsidiaries of Time Warner and by MediaOne.

commitments or expenditures relating to the cable systems, and decisions with respect to the design, architecture and designation of cable systems for upgrade.

TWE states that the TCI of Hawaii cable systems will become a member of TWE's Hawaii Division, with its own financial, regulatory and customer service standards. The Maui, Molokai/Lanai, and Ka'u systems will have their own financial, regulatory, and customer service standards, with management oversight and responsibility provided by Oceanic Cable. TWE also proposes to fold TCI of Hawaii's Hawaii Kai system into Oceanic Cable's franchise.

In its transfer application TWE sets forth certain representations or commitments. Although all representations made by TWE in connection with its transfer application are considered material by the State, some of the major representations or commitments of TWE are as follows:

1. TWE will support public, educational and government ("PEG") access by (a) contributing an amount equal to three percent (3%) of its annual gross revenues from the TCI of Hawaii systems for PEG operating funds; (b) contributing capital funds for PEG facilities and equipment; and (c) continue to provide the current PEG access channels on the Maui, Molokai and Lanai systems at no charge or cost to subscribers and the State, and provide a third access channel on the Ka'u cable system at no charge or cost to subscribers and the State;

2. TWE will contribute an amount equivalent to one percent (1%) of its annual gross revenues from the TCI of Hawaii systems to the Hawaii Public Broadcasting Authority;

3. TWE will provide fiber optic interconnections between INET sites designated by the Director within the franchise areas at TWE's actual cost of labor and materials, and to maintain and repair such interconnections at no charge or cost to the State; and

4. By December 31, 2001 TWE will upgrade the Maui, Molokai, Lanai, and Ka'u cable systems to a minimum bandwidth of 750 Mhz or analog channel capacity of 75 channels plus digital capability using fiber to node architecture, at a total cost of \$10,812,000.00⁴. For the Hana area of Maui and the Ka'u district of the Big Island, TWE will upgrade the microwave transmission facilities (up to 450 Mhz forward and 35 Mhz return) linking the Hana area to other parts of Maui

⁴ TWE states that it has already expended approximately \$2,764,000.00 for upgrading the Hawaii Kai system to a minimum bandwidth of 750 Mhz with digital capability using fiber to node architecture.

and linking Ka'u to other parts of the Big Island to allow for two-way connections, and the areas within Ka'u and Hana will be upgraded to 750 Mhz bandwidth with the use of additional satellite dish or dishes.

Because the franchise for TCI of Hawaii's cable systems expires on December 31, 2000, TWE is also requesting an extended franchise term for the TCI of Hawaii systems -- extension of 15 years or to December 31, 2014 for the Maui, Molokai, Lanai, and Ka'u cable systems, and an additional two years to the Maui franchise for an earlier completion of the proposed upgrades for the Maui, Lanai, and Molokai systems.

Pursuant to section 440G-7, Hawaii Revised Statutes, public hearings on the subject transfer application were held at follows:

- (a) Ka'u, Hawaii - February 4, 1999, at 5 p.m., Ka'u High and Pahala Elementary School;
- (b) Molokai - February 17, 1999, at 5:30 p.m., Kaunakakai Elementary School;
- (c) Lanai - February 19, 1999, at 5:30 p.m., Lanai Senior Center;
- (d) Maui - February 22, 1999, at 5:30p.m., Lihikai Elementary School; and
- (e) Hawaii Kai, Oahu - February 24, 1999, at 6 p.m., Koko Head Elementary School.

Notices of the public hearings were published on January 20 and 27, 1999, in the Hawaii Tribune Herald; January 24 and 31, 1999, in the Maui News; and January 30 and February 6, 1999, in the Honolulu Advertiser. Copies of the transfer application were available for review during normal business hours at public libraries in communities within TCI of Hawaii's franchise areas, the offices of TCI of Hawaii, and at the Cable Television Division, Department of Commerce and Consumer Affairs.

II. THE LAW.

A. Federal law

The transfer of a cable franchise is made under the authority of State law and is consistent with the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 (the "Cable Act").

Section 624 of the Cable Act allows franchising authorities to impose requirements for cable-related facilities and equipment which include, but are not limited to, channel capacity, system configuration, and institutional and subscriber networks. Section 611 permits franchising authorities to require that channel capacity be designated for public, educational or governmental access use. Section 622 allows the

assessment of a franchise fee up to five percent (5%) of annual gross revenues, any portion of which may be used for public, educational and governmental access.

B. State law

The regulatory powers of the Director regarding the transfer of a cable franchise are set forth in sections 440G-7, 440G-8, 440G-10.1, and 440G-12, Hawaii Revised Statutes, as amended ("Hawaii Cable Law").

Section 440G-10.1, Hawaii Revised Statutes, requires the Director's prior approval of a transfer of a cable franchise. Section 440G-8(b), Hawaii Revised Statutes, establishes the criteria to be considered by the Director prior to issuing a cable communications franchise, and states as follows:

(b) The director, after a public hearing as provided in this chapter, shall issue a cable franchise to the applicant when the director is convinced that it is in the public interest to do so. In determining whether a cable franchise shall be issued, the director shall take into consideration, among other things, the content of the application or proposal, the public need for the proposed service, the ability of the applicant to offer safe, adequate, and reliable service at a reasonable cost to the subscribers, the suitability of the applicant, the financial responsibility of the applicant, the technical and operational ability of the applicant to perform efficiently the service for which authority is requested, any objections arising from the public hearing, the cable advisory committee established by this chapter, or elsewhere, and any other matters as the director deems appropriate in the circumstances.

C. The Privilege of a Franchise

The grant of a cable franchise gives the recipient a right to use and occupy public places, highways and easements that are of a limited and scarce nature. Substantial economic benefits may flow to the recipient as a consequence of this privilege.

The privilege of a franchise therefore carries with it associated obligations. The franchisee should recognize that there are certain responsibilities it assumes when issued a franchise. These include operating a system that is both responsive and responsible to the public it serves, providing the widest possible diversity of information sources and services to its subscribers at a reasonable cost, and enhancing communications capabilities for its communities by supporting interconnection of public facilities, public television, and public, educational and governmental access.

III. STATUTORY CRITERIA.

A. Public Need for Proposed Service

There is a continuing public need for extending cable service within TCI of Hawaii's franchise areas. Decision and Order No. 187 issued March 22, 1996, identified many communities that were unserved because of Chronicle Cablevision's (thereafter TCI of Hawaii) line extension policy of 40 homes per mile. In response to the State's request for supplemental information, TWE submitted information indicating that most of the areas identified in Decision and Order No. 187 are currently being served. Areas remaining unserved include Kula 200, Waihee River Extension, Big Beach – Makena, Olinda, Keanae, Kahakuloa, and Wailua, Maui; Seacliff Extension, Kaluako'i Resort, Mauna Loa Village, East end of Molokai near Wavecrest Resort, Molokai; and Oceanview and Discovery Harbor/Mark Twain, Ka'u, Hawaii. However, TWE also states that line extension construction has begun in Kula 200, that it will begin construction in the Olinda area in June 1999, and that it is planning to build out the East end of Molokai soon.

Although many strides have been made with respect to extending cable service to outlying, rural or remote communities within Maui County, the State remains concerned for those without cable service. With advanced technology, informational programming such as educational distant learning and 24 hour news programs on cable systems become more than strictly entertainment, particularly in areas considered rural. TWE states that it will reduce TCI of Hawaii's line extension policy from 40 homes per mile to 25 homes per mile throughout the franchise areas. This will assist in getting more people connected to cable, but it is apparently not the total or final solution. For example, TWE states that extending cable service to the Keanae and Wailua areas of Maui is still not feasible even though the communities meet TWE's 25 homes per mile policy. According to TWE, Keanae and Wailua are approximately 30 and 35 miles, respectively, from the nearest cable trunk line, and to construct each area would be very expensive and involve non-standard construction. Nonetheless, TWE shall work with the Director's staff and shall prepare a report regarding the feasibility of extending cable service to all communities that remain unserved, which report shall be submitted to the Director in connection with the system upgrade plans. The Director reserves the right to require TWE to extend cable service to any unserved area identified in the report.

B. Suitability of the Applicant

In evaluating the suitability of TWE, the State considered, among other things, TWE's operation of its Hawaii cable division. Although the TCI of Hawaii systems will be owned by TWE, the systems serving Maui County will operate as a separate operating unit of TWE's Hawaii Division with its own profitability and capital spending measurements and regulatory and service standards. Oceanic Cable will,

however, maintain overall management of the TCI of Hawaii systems. TWE intends to maintain the current staffing of the systems and service offerings at the present time. Therefore, based upon the foregoing, TWE is a suitable applicant.

C. Operational Ability of the Applicant

Testimony presented on the subject application did not question TWE's ability to operate cable systems. Moreover, the history of TWE's Hawaii cable division, demonstrates TWE's ability to operate its cable systems in accordance with franchise obligations. Therefore, TWE is suitable to operate the TCI of Hawaii systems:

D. Technical Ability of the Applicant

TWE states that it will upgrade the TCI of Hawaii systems to a minimum bandwidth of 750 Mhz using fiber and digital technology similar to that used by Oceanic Cable and currently being deployed for TWE's Hawaiian Cablevision of Hilo and Sun and Kamehameha Cablevision systems on the island of Hawaii. TWE also states that the 750 Mhz upgrade will allow the deployment of TWE's advanced interactive services such as digital services, Internet access service, and video on demand as such services become available and are economically feasible.

It appears, therefore, that TWE has the requisite expertise to execute the technical requirements of the franchise and to incorporate technological developments in delivering services desired by subscribers.

E. Ability to Provide Service at Reasonable Cost and Financial Capability

TWE states that it is committed to offering safe, adequate and reliable services at a reasonable cost. The use of "fiber to node" architecture for TCI of Hawaii's systems upgrade should decrease outages, enhance system reliability, and improve picture quality. TWE also states that it is committed to meet or exceed all State and federal customer service standards, and where technically and economically feasible, TWE will utilize a "customer friendly" technical configuration that will allow subscribers to fully utilize cable consumer electronics equipment.

TWE also states that it is financing the systems' upgrades from working capital. As a part of working capital, TWE will be able to charge subscribers an additional \$1.00 per month per year for five years under its Social Contract with the FCC, should TWE elect to include the TCI of Hawaii systems into the Social Contract.⁵

⁵TWE's financial plan proposes certain rate increases to the cable programming services tier (or upper tier) for the year 2000 through 2003, that includes the \$1.00 Social Contract charge.

The Social Contract dollar is intended to allow TWE to recoup its costs of such systems' upgrade. Moreover, TWE is permitted under the Social Contract and has established regional equipment and installation charges, which charges are reviewed and approved by the Federal Communications Commission, but enforced by the local franchising authority.

Although it may be anticipatory at this time to presume that TWE will include the TCI of Hawaii systems in its Social Contract, consequences for inclusion will have a direct impact on rates and other matters. Under the Social Contract, TWE may, among other things, add systems to the provisions of the Social Contract subject to FCC approval, and with notice to the local franchising authority. Upon FCC approval, the added systems will have the benefit as well as obligations of the Social Contract provisions for a period of 5 years from the effective date of FCC approval. In the event TCI of Hawaii's systems are included into TWE's Social Contract, TWE will be required to provide, among other things, the following:⁶

- (a) Free cable connections to all public schools in the systems' franchise areas where TWE provides cable service and are passed by its systems;
- (b) Cable connections at cost to all qualified secondary private schools where TWE provides cable service and are passed by its systems;
- (c) Free BST and CPST service to each outlet to the connected public and private schools⁷;
- (d) Provide connected schools with a monthly educational program guide with curriculum support ideas to assist educators in using new services; and
- (e) Provide on-line personal computer service and modem, when available, to each connected school at no charge during the school year.

⁶ Currently all of TWE's cable systems within its Hawaii Division have been included into its Social Contract with the FCC. According to TWE, all of its cable systems have complied with Social Contract obligations described in subparagraph (a) through (d), but only Oceanic Cable will offer TWE's Road Runner service at the present time.

⁷ Under section 440G-8.2(e), HRS, all cable operators are required to provide a cable drop and basic cable service at no cost to any school or institution of higher education within their service areas, provided that service is actually delivered within a reasonable distance from the requesting school or institution of higher education.

Once the upgrades are completed for TWE's neighbor island systems including TCI of Hawaii systems, subscribers and schools within the systems' service area should receive the benefits provided under TWE's Social Contract.

In addition, effective as of March 31, 1999, the Federal Communications Commission will no longer regulate the cable programming services tier.⁸ Consequently, only the lowest tier of cable programming - the basic service tier, will continue to be regulated by local franchising authorities. TWE's financial plan indicates a 4% annual increase in both the basic service tier rates and cable programming service tier rates for a period of 10 years, and for the years 2000-2003, an additional \$1.00 per month per year as provided under the Social Contract.

It is also noted that cable rates are different for each of TCI of Hawaii's cable systems, primarily because of differing system capacities and subscriber base. For example, except for the Hawaii Kai cable system (recently upgraded to 750 Mhz bandwidth with 80 analog channels but 77 currently activated), each of TCI of Hawaii's cable systems serving Maui, Molokai and Lanai is designed at 330Mhz bandwidth (maximum of 41 analog channels, but 45 activated for Maui, and 36 activated for Molokai and Lanai), and the Ka'u system is designed at 300 Mhz bandwidth (maximum of 36 analog channels but 22 currently activated). Accordingly, the State will continue its efforts in reviewing TWE's charges for services provided consistent with applicable law.

Lastly, TWE is a multi-system operator with numerous other cable systems including recent acquisitions such as the Hawaiian Cablevision of Hilo and Sun and Kamehameha Cablevision on the island of Hawaii that are all presently being upgraded. The Director is concerned about the availability of sufficient capital and other resources for TWE to complete the proposed TCI of Hawaii systems upgrade and the other system upgrades when required.

Therefore, in order to provide adequate assurances that the proposed upgrades will be completed at the time required, the Director may require TWE to deposit an amount equal to the total construction cost of the proposed upgrades in a Development Fund, in the event circumstances arise that significantly affect TWE's ability to complete the upgrade within the time frame required. The Development Fund requirement will be extinguished upon the satisfactory completion of the TCI of Hawaii systems upgrade.

⁸Other state and federal statutory requirements will continue to apply to cable operators such as program access rules, pole attachment and conduit access, mandatory local broadcast signal carriage, ownership, customer service standards, technical standards and signal leakage, navigation devices, closed captioning, and commercial leased access requirements.

IV. FRANCHISE AMENDMENTS: OTHER MATTERS.

Control The Hawaii Cable Law states that no change of control of a cable system may occur without the prior approval of the Director. The State is concerned that the entity or individual which actually controls the operations of the cable system, regardless of the means by which that person holds that control, is known to the State, meets the threshold requirements for holding a cable franchise, and is responsible and accountable to the State. Therefore, any change in control of TWE's ownership of the former TCI of Hawaii systems shall require the prior approval of the Director.

Upgrade A key consideration in the State's review of cable franchises in Hawaii is to assure that they are technically capable of meeting the existing and future needs and desires of the communities they serve. TWE proposes to upgrade TCI of Hawaii's cable systems by December 31, 2001 to a minimum bandwidth of 750 Mhz, with digital capability, using fiber to node architecture. TWE states that advance interactive cable services such as "Road Runner" Internet access and digital services will be provided to subscribers within the franchise areas when such services become technically and economically feasible. Thus, it is anticipated that high speed Internet cable access and other new services may be available to TWE subscribers within Maui, Lanai, Molokai and Ka'u during construction and after completion of the systems' upgrades regardless of the delivery system, e.g., fiber or microwave or both.

In connection with TWE's 750 Mhz upgrade proposal, TWE will be required to provide capacity and access for cable subscribers to the State's INET, to the extent that two-way broadband multimedia, video, voice, and data capabilities are available in the future. Although the manner in which subscriber access will be provided is presently uncertain, the State's objective of receiving capacity and access to an advanced telecommunications infrastructure through TWE's upgraded TCI of Hawaii cable systems is advanced by allowing subscriber access to the State's INET.

The Director has, in general, accepted TWE's proposal to increase channel capacity of TCI of Hawaii cable systems, and to complete the proposed upgrades by December 31, 2001. It is noted that the Director, after completion of the 750 Mhz upgrade, may address the need for and may require TWE to complete additional upgrades of the TCI of Hawaii cable systems. It is contemplated that any future upgrade that may be required by the Director will be first discussed with TWE. At that time, the Director may also review public, educational, and government access, INET interconnect requirements, new technologies and services, and any other matter related to the cable systems and franchise areas.

Public, Educational, and Governmental Access PEG access has been and continues to be an important issue for the State. In establishing PEG access in Hawaii, the State viewed it as a means for cable subscribers to receive informational and educational programming that in general reflect the communities in which they reside.

The Director notes, however, that funding for PEG access via cable companies' contributions should not be viewed as entitlement. Rather, PEG access entities and organizations should be developing short and long term alternative funding strategies.

The Director has, through the requirements of this Order, balanced the need for access resources expressed by the community and the current economic and financial crises confronting the State and private sectors.

The Director accepts TWE's proposal to contribute an amount equal to 3% of annual gross revenues from the TCI of Hawaii systems for PEG access operating funds. Contributions of capital funds for PEG facilities and equipment shall be as set forth in the attached terms and conditions.

The Director may establish a planning process for Maui County in bringing together all cable systems and interested parties to create and implement a coordinated plan for access activities which make the most effective use of available, if not limited, resources. Specific concerns with respect to equipment and facilities, channel time, and other matters will be addressed in the development of such plan. Notwithstanding the generality of the foregoing sentence, two-way capability for live cablecasting of government meetings as government access, e.g., county council and county agency meetings or hearings, shall be addressed in the plan. The cost to implement and maintain such live cablecasting shall be borne by Maui County and the PEG access entity or entities. TWE shall provide technical assistance and other non-monetary assistance when requested by the PEG access entity or the Director.

Several testimonies raised the concern of the PEG access channels managed by Akaku: Maui Community Television, Inc. ("Akaku") being placed nonsequentially on the TCI of Hawaii Maui cable system, and on different channels on TCI's Lanai and Molokai systems, and TWE's Hawaiian Cablevision system in Lahaina. For example, educational programming from Maui Community College is on TCI's Maui system channel 12, and public access and government programming from Akaku are on channels 44 and 45.⁹ PEG access programming on TWE Hawaiian Cablevision cable system is on channel 6 (Akaku access), channel 12 (educational access), and channel 13 (Akaku access).

The Director notes that cable operators are required to place, among other programming, PEG access channels within the cable operators' lowest tier of service or basic service tier for purposes of rate regulation.¹⁰ The Director understands that actual

⁹ According to information provided by TCI, for the Molokai and Lanai cable systems, one access channel is on channel 3, the other access channel is on channel 13, and educational access programming from Maui Community College is on channel 12.

¹⁰ 47 U.S.C. section 543 (b)(7)(A).

placement of such channels within the basic service tier lies with the cable operator. However, with the acquisition of the TCI of Hawaii systems serving Maui, Lanai and Molokai, TWE will control all duly franchised cable systems serving Maui County. As such, it would not be unreasonable for TWE to make consistent the placement of PEG access channels managed by Akaku on the same channels for all of its cable systems within Maui County.¹¹ This would provide consistency and eliminate subscriber confusion as to PEG access programming within Maui County. Accordingly, TWE, in consultation with Akaku, shall provide consistent locations on its Maui, Molokai and Lanai cable systems for PEG access programming no later than September 30, 1999.

In addition, TWE shall provide at no cost to subscribers two additional PEG access channels (one educational and one government/public) on its Maui, Molokai and Lanai cable systems.¹² At the request of the Director, the additional channels shall be provided and reserved for activation as the respective systems' upgrades progress. In other words, as additional channels become available on a node-by-node basis in connection with the systems' upgrades, TWE shall reserve two of the newly available channels for PEG purposes for activation at the request of the Director.

Public Broadcasting The continued viability of public broadcasting is in the public interest. The Hawaii Public Broadcasting Authority ("HPBA") provides educational, informative, and entertaining programming that is a valuable public resource for the people of the State of Hawaii. The Director accepts TWE's commitment to contribute an amount equal to one percent (1%) of TCI of Hawaii systems' annual gross revenues to HBPA.

Institutional Network TWE is committed to continue to support the State's INET and provide interconnections at its actual cost to the State. TWE has reaffirmed its commitment to provide, at its actual cost to the State, two-way fiber optic institutional network interconnections as may be required by the Director. TWE proposes to maintain and repair the fiber optic lines at no charge or cost to the State, and to replace the same at TWE's actual cost of labor and materials.

¹¹ It is noted that TWE Hawaiian Cablevision of Hilo has the same channel locations for PEG access channels on its Hilo and Honokaa systems, and that G Force, LLC dba Garden Isle Telecommunications has the same channel locations for PEG access channels on its Garden Isle and Kauai Cablevision systems.

¹² Because the Hawaii Kai system is being incorporated into Oceanic Cable's franchise and the Ka'u system is being incorporated into TWE Hawaiian Cablevision of Hilo's franchise, PEG access requirements as well as other provisions for those franchises shall govern with respect to the areas of Hawaii Kai and Ka'u, respectively.

The Director recognizes that the continuing expansion of the State's INET is a significant component of the State's telecommunications infrastructure. However, continued expansion requires funding for reimbursements to cable operators. Thus, except as provided herein, payment or reimbursement to TWE for its actual cost of labor and materials for INET interconnections or connections will be the sole responsibility of the requesting agency, department, or other governmental entity.

Several government sites or agencies were identified as sites to be connected to the State's INET --

Maui Community Correctional Center
Maui Memorial Medical Center
Maui Police Stations (including Lanai and Molokai)
Maui Fire Stations (including Lanai and Molokai)
Maui County Buildings
High Technology Development Corporation at Maui Research and
Technology Center
Kahului Public Library
Kihei Public Library
Makawao Public Library
Wailuku Public Library
Molokai Public Library
MCC Hana Education Center
MCC Molokai Education Center and facility in Maunaloa
MCC Lanai Education Center
Department of Accounting and General Services Engineering Office
Kula Hospital
Molokai – State microwave tower
Molokai State Office Building
Lanai Clinic and Hospital

At the request of the Director, TWE shall provide two-way fiber optic interconnections of the above identified sites, and all schools and public libraries not already connected to its cable system(s), all at no cost or charge to the State or subscribers. TWE will maintain and repair the fiber optic lines at no charge or cost, and will replace the same at TWE's actual cost of labor and materials, which cost will be the responsibility of the affected government agency or agencies.

In addition to the above identified sites, TWE, at the request of the Director, shall provide over the term of the franchise two-way fiber optic interconnections to ten (10) sites to be determined by the Director all at no cost or charge to the State or subscribers. TWE will maintain and repair the fiber optic lines at no charge or cost, and will replace the same at TWE's actual cost of labor and materials, which cost will be the responsibility of the affected government agency or agencies.

Interconnection with Hawaii Interactive Television TWE shall provide and maintain a fiber interface with the Hawaii Interactive Television System (HITS) at no charge or cost to the State.

Consolidation of Hawaii Kai and Ka'u Systems The Director agrees with TWE that consolidating the Hawaii Kai system into TWE Oceanic Cable's franchise is in the public interest. Two separate franchises on the same island for one cable operator would not promote operational efficiency with respect to customer and technical services as well as reasonable cable rates. Accordingly, by a separate order issued concurrently herewith, the Hawaii Kai cable system will be incorporated into TWE Oceanic Cable's franchise.

For similar reasons, the consolidation of the Ka'u system into TWE's franchise covering East Hawaii is also in the public interest. TWE has two franchises covering West Hawaii (Sun and Kamehameha Cablevision) and East Hawaii (Hawaii Cablevision of Hilo serving Volcano, Hilo, Pahoia, Honokaa, and Hamakua). TWE proposes to upgrade the Ka'u system by upgrading the current microwave from 330 Mhz to 550 Mhz (500 Mhz upstream and 50 Mhz downstream) with additional satellite receive dish or dishes to utilize the remaining 200 Mhz of bandwidth for additional programming, and by using fiber to node architecture for a total minimum bandwidth at 750 Mhz (75 analog channels, and capacity for digital channels). The Ka'u system upgrade and consolidation with Hawaiian Cablevision of Hilo will provide Ka'u subscribers with the same programming and services as Hawaiian Cablevision of Hilo's subscribers¹³, enhanced customer and technical service, and improved delivery of and expanded PEG access channels and programming from Na Leo 'O Hawaii. Accordingly, by a separate order issued concurrently herewith, the Ka'u cable system will be incorporated into TWE's franchise for East Hawaii, and TWE will upgrade the Ka'u system by December 31, 2000 which is the required completion date for TWE's Hawaiian Cablevision of Hilo's system upgrade.

Customer Service Facilities on Molokai and Lanai Each of TCI of Hawaii's cable systems serving the islands of Lanai and Molokai, the Ka'u district of the island of Hawaii, and the Hana area of the island of Maui, do not have a customer service center. According to TCI of Hawaii, customers within Lanai, Molokai and the Ka'u district must use a toll free number to reach its service center in Kahului, Maui. Cable bills may be paid at certain banks on Molokai and Lanai, and in Hana, Maui. The Director understands that there is at least one technician on Molokai and one in Ka'u, Hawaii, and none on Lanai (a technician flies from Honolulu to Lanai twice a week).

¹³ Consolidation will also enable schools to receive certain benefits such as on-line personal computer service and modem at no charge as provided under TWE's Social Contract with the FCC.

47 C.F.R. section 76.309, relating to customer service obligations, states that the cable operator's customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located. TWE states that to provide full-time customer service and/or technical personnel on Lanai and Molokai would be cost prohibitive in light of the number of subscribers for those systems.

A reasonable accommodation would be for TWE to provide direct customer service for its subscribers on Lanai and Molokai at least two full days per week. This would complement the technical personnel presently assigned to Molokai and Lanai. Accordingly, TWE shall provide the appropriate personnel to deliver customer services for its subscribers on Molokai and Lanai at least twice each week, and shall make such service available by October 1, 1999.

Extension of Franchise Term In connection with its transfer application, TWE has requested that the franchise term for the TCI's Maui, Molokai and Lanai cable systems be extended for an additional 15 years or to December 31, 2014. Although TWE has made significant commitments to such systems, the Director believes that a shorter initial extension of the franchise term, together with an additional period contingent upon the satisfactory completion of the 750 Mhz upgrades is in the public interest. Accordingly, the franchise term for the Maui, Molokai and Lanai cable systems will be initially extended for nine years (9) to December 31, 2009, and will be further extended to December 31, 2013 upon satisfactory completion of the 750 Mhz systems upgrades by December 31, 2001. However, if TWE does not satisfactorily complete the 750 Mhz upgrades by December 31, 2001, the franchise shall expire on December 31, 2009, and the Director, in addition to other rights and remedies available to the Director under applicable law or as provided in this Order, shall have the right to impose any term or condition deemed necessary or appropriate to serve or protect the public interest.

Statewide Interconnection TWE states that it is conducting a feasibility study on interconnecting its cable systems using combination of fiber, microwave, and satellite technology, whereby all services currently offered on Oahu can be offered to subscribers of its neighbor island cable systems. The Director agrees that with the upgrades on TWE's neighbor island cable systems being identical to Oceanic Cable's infrastructure and electronics, there should not be disparity among TWE's cable systems with respect to services offered. In addition, State's INET interconnectivity on a statewide basis is integral to the furtherance of the State's information highway. Accordingly, TWE shall submit its feasibility report including statewide connectivity of the State's INET to the Director by March 1, 2000.

V. CONCLUSION.

Based on the information presented in the application, and the evaluation of this information, the Director concludes that it is in the public interest to approve TWE's application for transfer and amendment of the cable franchise held by TCI of Hawaii, Inc.

VI. ORDER.

NOW, THEREFORE, the application for transfer and amendment of the cable franchise held by TCI of Hawaii, Inc. to Time Warner Entertainment Company, L.P. is hereby APPROVED, subject however, to the following:

(a) Closing of the Asset Exchange Agreement provided that there has been no material changes to the Asset Exchange Agreement subsequent to that reviewed by the State. Time Warner Entertainment Company shall immediately notify the Director in writing of the closing of the Asset Exchange Agreement, and whether any material changes were made to said Agreement prior to or at closing.

(b) Federal Communications Commission approval of FCC CARS license transfers from TCI of Hawaii to Time Warner Entertainment Company, L.P., and to any conditions, obligations, and requirements imposed by the Federal Communications Commission in connection therewith.

(c) Terms and conditions set forth in this Decision and Order and to the terms and conditions attached hereto and made a part hereof.

All terms and conditions pertaining to TCI of Hawaii's cable franchise and applicable cable systems transferred to Time Warner Entertainment Company, L.P. are contained in this Order.

Notwithstanding any provision to the contrary, in the event the Asset Exchange Agreement fails to close for whatever reason, or any cable system of TCI of Hawaii is not a part of the transaction under the Asset Exchange Agreement at closing, this Decision and Order shall be deemed null and void, and Decision and Order Nos. 148, 150, 187, and 239 shall be in full force and effect. In such event, Time Warner Entertainment Company, L.P. shall immediately provide sufficient written notification to the Director, and the Director shall have the right to take any and all action and to issue

such orders as the Director deems necessary or appropriate to serve and protect the public interest with respect to the cable services within the subject franchise areas in accordance with applicable law.

DATED: Honolulu, Hawaii, May 10, 1999.

A handwritten signature in black ink, appearing to read 'Kathryn S. Matayoshi', is written over a horizontal line.

KATHRYN S. MATAYOSHI
Director of Commerce and Consumer Affairs

TERMS AND CONDITIONS OF ORDER NO. 241

Section One Definitions

For purposes of these terms and conditions of Order No. 241, the following words, terms, phrases, and their derivations shall have the meaning given herein. Words not defined shall be given their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. "Shall" and "will" are mandatory, not merely directive or permissive. "May" is permissive.

"Access Cablecast Day" means a day or part thereof during which an Access Channel is available for PEG use.

"Access Channel" means any Channel on the System made available for public, educational, or governmental (hereinafter sometimes referred to as "Access" or "PEG") use.

"Access Facilities and Equipment" means (a) channel capacity designated for public, educational, or governmental use; and (b) facilities and equipment for the use of such channel capacity.

"Access Operating Fee" means the yearly fee to be paid by TWE to the Director or Director's designee for public, educational, or governmental uses pursuant to section 4.2 hereof.

"Activated Channel" means a Channel engineered at the headend of the Cable System for the provision of services to Subscribers of the Cable System, regardless of whether such services actually are provided, including any Channel designated for public, educational, or governmental use.

"Annual Fee" means the Annual Fee required to be paid by TWE pursuant to Hawaii Revised Statutes section 440G-15, as said statute may from time to time be amended.

"Basic Service" means the lowest cost tier of cable service offered by TWE to all of its Subscribers which includes, at a minimum, the delivery of local television broadcast signals, access channels, and local origination programming.

"Cable Act" means the federal Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 (codified at 47 U.S.C. § 521 et seq.), and as may be further amended from time to time.

"Cable Drop" means the cable from the feeder line to the Subscriber's premises.

"Cable Service" shall have the meaning set forth in Hawaii Revised Statutes section 440G-3, as said statute may from time to time be amended.

"Cable system" or "System" shall have the meaning set forth in Hawaii Revised Statutes section 440G-3, as said statute may from time to time be amended.

"Channel" means a minimum of six megahertz (6 Mhz) in the electromagnetic spectrum which is capable of carrying any type of transmission which TWE is authorized to provide to Subscribers.

"Department" means the Department of Commerce and Consumer Affairs of the State of Hawaii.

"Director" means the Director of Commerce and Consumer Affairs of the State of Hawaii or the director's representative.

"Director of Civil Defense" means the Director of Civil Defense of the State of Hawaii.

"Educational Access Channel" means any channel on the System which is made available by TWE for use by educational authorities such as the University of Hawaii and Department of Education of the State of Hawaii, and accredited educational institutions for noncommercial educational purposes.

"Emergency Authority" means the Director of Civil Defense, County of Maui, Deputy Director of Civil Defense, and any other Person designated by the Director.

"Emergency Override System" means the emergency alert system specified in section 5.2 hereof.

"Franchise Fee" shall have the meaning set forth in section 622(g) of the Cable Act, as said statute may from time to time be amended.

"Government Access Channel" means any Channel on the System made available for use by city, county and state government, or agencies thereof.

"Gross Revenues" means all cash, credits, property of any kind or nature or other consideration derived directly or indirectly by TWE, its affiliates, subsidiaries, parents, and any other person or entity in which TWE has a financial interest or which has a financial interest in TWE arising from or attributable to operation of the System, including but not limited to:

- (a) Revenue from all charges for entertainment and non-entertainment services provided to Subscribers;**
- (b) Revenue from all charges for the insertion of commercial advertisements upon the Cable System;**
- (c) Revenue from all charges for the leased use of studios or Channels;**
- (d) Revenue from all charges for the installation, connection and reinstatement of equipment necessary for the utilization of the Cable System and the provision of Subscriber and other service; and**
- (e) Revenue from the sale, exchange or use or cablecast of any programming developed for community use or institutional users.**

Gross Revenues shall include, valued at contract price levels, the value of any goods, services, or other remuneration in non-monetary form, received by TWE or others described above in consideration of performance by TWE or others described above of any advertising or other service in connection with the System.

"Law" means any law, including common law, constitution, statute, treaty, regulation, rule, ordinance, order, injunction, writ, decree or award of any court or administrative body.

"Order" or "Order No. 241" means Decision and Order No. 241 issued by the Director of Commerce and Consumer Affairs on May 10, 1999, including all terms and conditions and exhibits.

"Person" means any individual, or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not for-profit, but shall not mean the Director or the Department.

"Public Access Channel" means any Channel on the Cable System made available for use by individuals and organizations for noncommercial purposes.

"Public Highways" shall have the meaning set forth in Hawaii Revised Statutes section 264-1, as said statute may from time to time be amended.

"Public Place" includes any property, building, structure, or water to which the public has a right of access and use.

"Service Area" means those areas described in section 2.2 hereof.

"State" means the State of Hawaii including its political subdivisions.

"Subscriber" means any Person lawfully receiving any Cable Service.

"System" sometimes collectively referred to as the former TCI of Hawaii, Inc. cable systems serving the islands of Maui (except West Maui), Molokai, and Lanai.

"TCI" means TCI of Hawaii, Inc., a Colorado corporation, and former holder of the franchise set forth in Decision and Order Nos. 148, 150, 187, and 239.

"TWE" means Time Warner Entertainment Company, L.P., a Delaware limited partnership.

Section Two Grant of Franchise

2.1 Franchise Term

(a) The term of the franchise for the System shall be initially extended for a period of nine (9) years from December 31, 2000 to December 31, 2009, unless extended as provided in paragraph (b) below, or unless terminated as provided in section 11 hereof or by applicable law.

(b) The term of the franchise shall be extended for an additional four (4) years only upon satisfactory completion of the 750 Mhz system upgrade described in section 3.1 hereof, in which case the term of the franchise shall expire on December 31, 2013 unless terminated as provided in section 11 hereof or by applicable law.

2.2 Service Area

The franchise shall cover the island of Maui (except Lahaina) covering census tracts 301, 302, 303.01, 303.02, 304.01, 304.02, 305, 306, 307, 308, 309, 310, 311.01, 311.02, 311.03, 312 and 313; the island of Molokai covering census tracts 317, 318 and 319; and the island of Lanai covering census tract 316.

2.3 Consideration

(a) In consideration of the award of the franchise granted herein which permits TWE to use and occupy Public Places and Public Highways to operate a Cable System, TWE shall pay all fees required by Chapter 440G, Hawaii Revised Statutes, as the same may be amended from time to time, pay all monies and fees specified herein, and provide all Channels, facilities, equipment, technical assistance, and services specified herein.

(b) Notwithstanding any other provision to the contrary, the total amount of Franchise Fees paid in a calendar year, including the Annual Fee for any calendar year, the annual Access Operating Fee, and the HPBA Fee set forth in section 2.6 hereof, shall not exceed five percent (5%) of the System annual Gross Revenues or the maximum amount permitted by applicable provisions of federal or State law, as said law or laws may be amended throughout the term of the franchise.

2.4 Ownership of Facilities and Plant

(a) TWE shall maintain legal and equitable title to the present System and all future additions to the System; provided, however, that TWE may lease or permit the use of a portion of the System to a third party or lease a portion of the same from a third party, upon the prior written approval of the Director. Such approval shall not be required with respect to any Channels required to be leased pursuant to the Cable Act.

(b) The Director shall grant such approval if (1) the proposed lease or permitted use will result in savings to Subscribers; (2) the arrangement does not result in a loss of TWE's control of its distribution facilities; and (3) the Director is convinced that it is in the public interest to approve the proposed lease or permitted use. The Director shall make such determination in the Director's sole discretion.

2.5 Antitrust

(a) Order No. 241 shall not be construed as exempting TWE and any affiliated or controlling entities from any antitrust law.

(b) Order No. 241 does not constitute an adjudication upon any antitrust issues which may be involved in this proceeding.

2.6 HPBA Fee

(a) For each and every year of the franchise, TWE shall pay to the Hawaii Public Broadcasting Authority or its designee as approved by the Director an amount equal to one percent (1%) of the System annual Gross Revenues.

(b) TCI shall be responsible for the payment due February 15, 2000 covering the period January 1, 1999 up to the closing date of that certain Asset Exchange Agreement dated as of November 25, 1998, as more particularly described in this Order 241, and TWE shall be responsible for the payment due February 15, 2000 covering the period remaining for the 1999 calendar year. In the event TCI does not pay its full amount when due, TWE shall be responsible for making said payment within 10 days after receipt of Director's notice.

(c) Except as otherwise provided in paragraph (b) above, the one percent (1%) HPBA Fee shall be paid annually on January 31 and shall be based on the System Gross Revenues for the preceding calendar year.

(d) In connection with the payments required under this section 2.6, TWE shall submit to the Director verified copies of all payments made to the Hawaii Public Broadcasting Authority or its approved designee.

Section Three System Upgrades

3.1 750 Mhz System Upgrade

(a) By December 31, 2001, TWE shall construct, reconstruct, rebuild, reconfigure, and/or upgrade the System to a minimum bandwidth of 750 Mhz plus digital capability, and provide a minimum of 75 activated Channels. For purposes of this Order, this upgrade shall be referred to as the "750 Mhz Upgrade."

(b) TWE shall provide capacity for and access through its Cable System for Subscribers to the State's institutional network described in section 5 hereof, to the extent that two-way broadband multimedia, video, voice, and data capabilities are available pursuant to the 750 Mhz Upgrade described herein.

(c) No later than September 1, 1999, TWE shall submit to the Director for approval a financial plan with detailed cost estimates, a detailed engineering plan, a proposed schedule for construction of the 750 Mhz Upgrade including the incremental deployment of fiber to node architecture in a manner that will allow network sites to be connected easily and economically to the State's INET and activation of the completed portions of the upgraded system to specific communities or areas, the interconnection of cable systems within Maui County, and such other information as the Director deems necessary. If, after one year from receipt of the upgrade plan, the Director does not approve said plan or require any supplemental information or changes thereto, the upgrade plan as submitted shall be deemed approved.

(d) In the event the 750 Mhz Upgrade is not satisfactorily completed by December 31, 2001, the franchise shall expire on December 31, 2009 unless terminated sooner as provided in Section 11 hereof or by applicable law, and all interest paid or accrued on the amount deposited by TWE into the Development Fund as provided in section 3.3 hereof shall belong to the State. The Director, in addition to all other rights and remedies the Director may have as provided by law or as provided by this Order 241, shall have the right to impose any term and condition deemed necessary or appropriate to serve or protect the public interest.

3.2 Further System Upgrades

After completion of the 750 Mhz upgrade as described in section 3.1 hereof, to the extent commercially and technologically reasonable, the Director may address the need for additional upgrades and may require TWE to complete additional system upgrades at such times as determined by the Director. In connection therewith, the Director may review other matters relating to the System including, but not limited to, public, educational, and governmental access requirements under section 4 hereof, institutional network and interconnect requirements under section 5 hereof, provision of non-video programming such as Internet access, and other new technologies and services.

3.3 Development Fund

In the event circumstances arise that significantly affect TWE's ability to complete the 750 Mhz Upgrade as described in section 3.1 hereof, the Director, in the Director's sole discretion, may require TWE to set aside an amount equal to the total cost of construction of the 750 Mhz Upgrade. Within 30 days after receipt of written notification by the Director, TWE shall deposit an amount equal to the total cost of construction of the 750 Mhz Upgrade in an interest bearing account at any bank or financial institution authorized to do business in the State of Hawaii ("Development Fund").

All amounts in the Development Fund including all interest paid or accrued thereon shall not be commingled with other funds of TWE or any related entity. TWE shall have the authority to draw on the Development Fund for purposes of financing and constructing the 750 Mhz Upgrade; provided, however, that TWE shall not make any withdrawals from the Development Fund without the prior written approval of the Director. The Development Fund shall not be pledged, dedicated, or used as collateral for any purpose other than financing the 750 Mhz Upgrade, except upon written application to and prior written approval by the Director. The provisions of this section 3.3 shall terminate upon satisfactory completion of the 750 Mhz Upgrade.

Section Four
Public, Educational and Governmental Access

4.1 Access Plan and Implementation

TWE shall work cooperatively with the access entity or entities which shall be designated by the Director for the management, operation and use of public, educational, and governmental access facilities and equipment for the County of Maui. TWE shall also work cooperatively with the designated access entity or entities, the Director's staff, and others designated by the Director to develop a coordinated plan for the use of public, educational, and governmental access resources and facilities and equipment for the County of Maui ("Access Plan"). The Access Plan shall at a minimum address the following:

- (a) Resources available in the County of Maui for access use;
- (b) User needs and interest including two-way live cablecasting of government access programming so that the tri-islands of Maui County can be connected to provide access to and participation in government hearings and meetings;
- (c) Models for providing public, educational and governmental access;
- (d) Management of access facilities and equipment, including the interconnection of the cable systems within Maui County, the need for additional access channels, and the provision of facilities and equipment for the production of programming, including local origination programming;
- (d) Coordination of access with HITS (Hawaii Interactive Television System), HAWAIIAN (Hawaii Wide Area Integrated Information Access Network) and any other interconnects;
- (e) Coordination of access with the Institutional Network as described in section 5 hereof; and
- (f) Funding requirements for public, education and government access including long and short term alternative financial strategies.

TWE, in coordination with the designated access entity or entities and other cable systems within Maui County, shall prepare and submit the Access Plan to the Director for review and approval by December 1, 1999 or at such other date as the Director may designate. Any and all costs associated with the preparation of the Access Plan including the cost of consultant services shall be the sole responsibility of the designated access entity or entities. Implementation of the Access Plan shall be at the direction of the Director.

4.2 Access Operating Fee

(a) During each and every year of the term of the franchise, TWE shall pay to an account designated by the Director or the Director's designee an amount equivalent to three percent (3%) of TWE's annual gross revenues from the System. These payments shall be used for public, educational, and governmental access ("PEG access") purposes and for other public purposes as designated by the Director. Such payments shall be hereinafter referred to as the "Access Operating Fee."

(b) For the year ending December 31, 1999, TCI shall be responsible for the payment due February 15, 2000 covering the period January 1, 1999 up to the closing date of that certain Asset Exchange Agreement dated as of November 25, 1998, as more particularly described in Order 241, and TWE shall be responsible for the payment due February 15, 2000 covering the period remaining for the 1999 calendar year. In the event TCI does not pay its full amount when due, TWE shall be responsible for making said payment within 10 days after receipt of Director's notice. The payments due under this paragraph (b) shall be based on actual System Gross Revenues for year ending December 31, 1999.

(c) Except for the payment required under paragraph (b) above, the Access Operating Fee shall be payable each year on the first day of the calendar year based on the estimated System Gross Revenues for that year. For example, on January 1, 2000 the entire estimated three percent (3%) Access Operating Fee for the year 2000 shall be paid based on the estimated System Gross Revenues for that year.

(d) The amount of Access Operating Fees paid during any year shall amount to no less than two and four-tenths percent (2.4%) of actual System Gross Revenues for the applicable one-year period. If TWE fails to pay the minimum estimated Access Operating Fees required by this paragraph (d), TWE shall be deemed in violation of this Order.

(e) All payments of the Access Operating Fee shall be reconciled with the actual amount of the System Gross Revenues for the applicable period. Such reconciliation shall take place no later than the end of the third month following the applicable one-year period. At the time of the reconciliation, TWE shall pay to the Director or the Director's designee any balance owed. If TWE is entitled to a refund, the Director shall grant a credit toward future Access Operating Fees, or grant a refund if the last payment of Access Operating Fees has been made.

(f) In connection with Access Operating Fees required to be paid by TWE under this section 4.2, TWE shall submit to the Director verified copies of all such payments and other supporting documentation as may be requested by the Director.

(g) Notwithstanding any provision to the contrary, the Director may reconsider the amount of the Access Operating Fee at any time.

4.3 Access Channels

(a) TWE shall designate and make available to the Director or the Director's designee a total of three (3) full-time activated Access Channels for public, educational, and governmental access over the System.

(b) At the direction of the Director, TWE shall designate and reserve for activation to the Director or the Director's designee, at least two (2) additional full-time Access Channels one each for educational and governmental access or as otherwise designated by the Director, as the respective systems' 750 Mhz upgrades progress. In other words, as additional channels become available on a node-by-node basis in connection with the systems' upgrades, TWE shall reserve two of the newly available channels for PEG purposes for activation at the request of the Director. The Director, at any time, may require TWE and the designated access entity or organization to prepare a plan which shall include an assessment of the need for the additional Access Channels, how such additional Access Channels will be made available, and any other information the Director may require.

(c) All Access Channels shall be made available by TWE at no cost to the State.

(d) All Access Channels, once made available, shall be used for public, educational, and governmental access and shall be transmitted to all Subscribers on TWE's basic service tier or the most widely available service tier.

(e) TWE may use the two (2) additional Access Channels required to be made available under paragraph (b) above until such time as the Director or the Director's designee gives sixty (60) days prior written notice to TWE that an Access Channel or portion thereof shall be made available. TWE's use of any Access Channel after it has received such notice from the Director or the Director's designee shall be subject to the fallow time provisions in section 4.4 hereof.

(f) The Director or Director's designee shall allocate Access Channels or portions thereof among Public Access Channels, Educational Access Channels and Government Access Channels; provided that allocations made with respect to public access shall comply with applicable law.

4.4 Fallow Time on Access Channels

(a) TWE shall be permitted to use time on one or more Access Channels whenever there are no Channels otherwise available on its system whether or not

activated and whenever such Access Channel(s) is not scheduled for use at least 72 hours in advance of such time or times desired by TWE; provided that any use of such Access Channel(s) by TWE shall at all times be subordinate to designated access use and shall terminate or be preempted by access programming scheduled at least 72 hours in advance.

(b) All non-access programming on Access Channels shall be identified as such by an appropriate announcement made prior to and following each non-access use.

(c) Notwithstanding paragraphs (a) and (b) above, at such time as any Access Channel has been programmed for a daily average of eight (8) hours or fifty percent (50%) of the hours of Access Cablecast Days, whichever is less, during any 90 day period, use of such Channel by TWE shall be suspended for such time as such minimum access use of the Channel is maintained. The provision of this paragraph (c) may be waived by the Director for good cause.

4.5 Facilities and Equipment

(a) For the years ending December 31, 1999 through December 31, 2004, TWE shall pay to an account designated by the Director or the Director's designee capital for public, educational, and governmental access facilities and equipment in accordance with the following schedule:

<u>Due Date</u>	<u>Amount</u>
December 31, 1999	\$70,000.00
December 31, 2000	\$65,000.00
December 31, 2001	\$70,000.00
December 31, 2002	\$80,000.00
December 31, 2003	\$60,000.00
December 31, 2004	\$83,000.00

(b) By April 30, 2004, TWE, in consultation with the designated access entity or entities, shall submit to the Director a schedule for the payment of capital for public, educational, and governmental access facilities and equipment for each year from December 31, 2005 through the remaining term of the franchise. The Director, in the Director's sole discretion, may approve, deny, or modify the payment schedule.

(c) Any PEG capital provided pursuant to this section 4.5 shall not be credited to the Access Operating Fee.

(d) Any transfer of the System shall require the payment to the Director or the Director's designee of the outstanding PEG capital funds for public, educational, and

governmental access required to be provided in this section 4.5 before the effective date of the transfer.

(e) The capital funds for the provision of facilities and equipment required to be provided by TWE under this section 4.5 shall be deemed to be capital contributions to the extent permitted under section 622(g)(2)(c) of the Cable Act.

4.6 Access Organization

The Director or the Director's designee may designate one or more entities to fund, control, manage or operate Access Facilities and Equipment.

4.7 Termination of Access Payments

(a) TWE may suspend making payments under sections 4.2 and 4.5 hereof if any of the following events occur:

- (1) A minimum of seventy-five percent (75%) of the current number of original hours of access programming is not produced; or
- (2) Such payments are used for non-access purposes.

(b) TWE's obligation to make such payments shall be reinstated at such time as the event causing the suspension is cured or rectified.

4.8 Interconnection for Access Purposes

(a) TWE shall effect interconnections with other cable systems within Maui County in accordance with a schedule and in a manner determined by the Director. Within six (6) months after the request of the Director, TWE shall submit to the Director for approval the construction plan and schedule. TWE shall work cooperatively with the Director's staff and others designated by the Director in developing a construction plan and schedule for the required interconnections.

(b) The cost of the interconnections to be constructed shall be allocated among each cable franchise within Maui County. For costs of construction allocated to the areas served by the System, TWE shall receive a credit for its actual cost of labor and materials to be applied against its requirement to pay the Access Operating Fee described in section 4.2 hereof or PEG capital funds described in section 4.5 hereof. The taking of any credit by TWE shall require the Director's prior approval. TWE shall provide documentation sufficient to verify the construction cost as requested by the Director.

4.9 Reopening of Access Requirements.

Notwithstanding any provision to the contrary, at any time during the term of the franchise, the Director may commence informal or formal proceedings for the purpose of addressing future public, educational, and governmental access, and cable-related community needs and interests, and the Director may take any action the Director deems necessary or appropriate.

4.10 Reporting Requirements

To the extent local origination and access programming are provided by TWE, by April 30 of each year TWE shall submit to the Director a report of the System local origination expenses and a report for access programming expenses for the previous calendar year.

**Section Five
Networks**

5.1 Institutional Networks

(a) Within six (6) months of a request by the Director, TWE shall install fiber optic lines, materials, and electronics for two-way broadband video, voice, and data capabilities, interconnecting network sites between the System and the following government sites all at no cost or charge to the State or Subscribers, provided that the sites at which TWE shall install the fiber optic lines have the necessary infrastructure and rights of way to receive the fibers and shall be implemented in accordance with the use of capacity as provided in section 3.1 hereof:

- Maui Community Correctional Center
- Maui Memorial Medical Center
- Maui Police Stations (including Lanai and Molokai)
- Maui Fire Stations (including Lanai and Molokai)
- Maui County Buildings
- High Technology Development Corporation at Maui Research and
Technology Center
- Kahului Public Library
- Kihei Public Library
- Makawao Public Library
- Wailuku Public Library
- Molokai Public Library
- MCC Hana Education Center
- MCC Molokai Education Center and facility in Maunaloa
- MCC Lanai Education Center

Department of Accounting and General Services Engineering Office
Kula Hospital
Molokai – State microwave tower
Molokai State Office Building
Lanai Clinic and Hospital

In addition to the above identified sites, TWE, at the request of the Director, shall install fiber optic lines, materials, and electronics for two-way broadband video, voice, and data capabilities, interconnecting network sites between the System and ten (10) additional sites to be determined by the Director all at no cost or charge to the State or Subscribers over the term of the franchise.

TWE shall maintain and repair the fiber optic lines up to the termination points of each network site at no charge or cost to the State or Subscribers, and shall replace any such fiber optic lines at TWE's actual cost of labor and materials which costs shall be borne solely by the connected government agency or agencies.

In the event TWE's access to conduits is not obtainable for interconnecting any of the sites, TWE shall immediately apprise the Director in writing of the situation or circumstances. At the request of the Director, TWE shall work cooperatively with the affected government agency or agencies and others designated by the Director, and shall develop and submit a plan for any such interconnection including, but not limited to, construction timetable and costs within 60 days after receipt of Director's request. In order to defray the cost of such construction for the requesting government agency or agencies, TWE agrees, at no cost to subscribers, to contribute an amount to be determined by TWE and the Director.

(b) TWE shall interconnect all schools and libraries within the Service Area to its System and provide a cable drop and basic service at no cost or charge to the State or Subscribers. TWE shall maintain and repair the fiber optic lines up to the termination points of each site at no charge or cost to schools or libraries, and shall replace any such fiber optic lines at TWE's actual cost of labor and materials which costs shall be borne solely by the connected school or library.

(c) Within six months of a request by the Director, TWE shall install fiber optic lines, materials, and electronics for two-way broadband video, voice, and data capabilities interconnecting network sites as determined by the Director at TWE's actual cost of labor and materials; provided that the sites at which TWE shall install fiber optic cables have the necessary infrastructure and rights of way to receive the fibers.

(1) When requesting such interconnections, the State will be cognizant of TWE's scheduling, manpower, and resource limitations.

(2) TWE shall repair and maintain, but not replace, the fiber optic lines installed under this paragraph (c) up to the termination points of each network site at no charge or cost to the State or Subscribers. TWE shall replace any such fiber optic lines at TWE's actual cost of labor and materials.

The requesting agency, department or other governmental entity shall be solely responsible for reimbursing TWE its actual cost of labor and materials for interconnections installed under this paragraph (c). Upon submission of invoices for the cost of such interconnections, together with such supporting documentation as may be required, and approval by the Director, the requesting agency, department or governmental entity shall promptly reimburse TWE for the costs of such interconnections, which shall include the cost of materials utilized including applicable taxes and shipping charges, cost of labor including social security, unemployment insurance, workers' compensation insurance, and other benefits and taxes; rental value of equipment and machinery; and a diagram showing the fiber optic route and terminating points.

(d) All interconnections shall be two-way via fiber optic lines and capable of carrying broadband multimedia, data, voice, and video, and shall be implemented in accordance with the use of capacity as provided in section 3.1 hereof.

(e) TWE shall work with the Director's staff, consultants, and others designated by the Director to design the institutional networks and to develop and implement coordinated plans for their use.

(f) TWE may construct the institutional networks required under this section 5.1 in a manner it deems appropriate, consistent with paragraphs (d) and (e) above. TWE may utilize contractors to construct or maintain all or any portion of such institutional networks, including without limitation other cable operators.

(g) Upon written request by TWE, the Director may grant an extension for the installation of the interconnections required under this section 5.1 for good cause.

5.2 Emergency Override System

(a) TWE shall configure and maintain the System to permit emergency authorities to override, simultaneously by remote control, all audio and video signals on all Channels. Emergency authorities shall include the County of Maui Administrator of Civil Defense. The emergency authorities shall have the sole discretion to determine when to activate the emergency override system.

(b) The Emergency Override System shall provide for activation from emergency operation centers for both voice and video messages.

(c) The video display during emergency voice messages may be State, Civil Defense, or other appropriate official emblems as designated by the emergency authorities.

(d) TWE shall purchase an Emergency Broadcast System receiver of the same type or its equivalent that radio broadcast stations are required by the Federal Communications Commission to purchase.

(e) TWE shall provide a Cable Drop and Basic Service at no cost or charge to the emergency operating center within its franchise area.

(f) TWE shall cooperate fully with the emergency authorities in the planning and implementation of the Emergency Override System, and shall at all times comply with all applicable laws and regulations.

5.3 Interconnection with Hawaii Interactive Television System (HITS)

TWE shall support and provide carriage of the Hawaii Interactive Television System (HITS) programming on the System at no cost or charge to the State. TWE shall provide and maintain a direct interconnect with the Hawaii Interactive Television System (HITS) at points to be designated by the Director at no charge or cost to the State or Subscribers.

5.4 Non-Franchise Fee/Capital Contribution

The items and services required to be provided under section 5 hereof at no charge or cost to the State shall not be deemed to be franchise fees under section 622(g) or capital contributions under section 622(g)(2)(C) of the Cable Act.

Section Six Programming Services

6.1 Mix, Quality, and Level of Service

TWE shall not alter its current mix, quality, and level of programming services for its System basic service tier or most widely available service tier without first obtaining the prior approval of the Director, which approval shall not be unreasonably withheld.

6.2 Broad Categories of Programming

(a) Subject to availability, TWE shall carry programming in each of the following broad categories on its basic service or most widely available service tier:

- (1) Public access programming;
- (2) Educational access programming;
- (3) Governmental access programming;
- (4) Local origination programming;
- (5) Public nonprofit stations with national programming; and
- (6) Broadcast television stations as required by the Federal Communications Commission or applicable law.

(b) No changes may be made by TWE in broad categories of video programming without the prior approval of the Director.

(c) TWE shall provide notice to the Director at least thirty (30) days in advance of any changes in its channel lineup.

Section Seven Management

7.1 Books and Records

TWE shall maintain at its local office(s) a complete set of books and records including, but not limited to, subscriber records, monthly profit-and-loss statements, and other documentation relating to the transaction of its business in the State. All books and records not maintained and available for review at the local office(s) shall, upon request, be made available locally within five (5) working days.

7.2 Tariff

TWE will amend its schedule of service rates and other information as required by the rules promulgated pursuant to Chapter 440G, Hawaii Revised Statutes, as amended, at least 30 days in advance of any changes. The terms and conditions of service shall be subject to approval by the Director to the extent permitted by law.

7.3 Reporting of Violations

(a) Upon acquiring knowledge of any event which is reasonably likely to lead to a violation of any condition of this Order, TWE shall immediately notify the Director in writing specifying: (1) the nature of such violation, (2) an opinion as to when the

violation is likely to occur, and (3) the action that TWE proposes to take regarding the probable violation.

(b) Upon acquiring knowledge of the existence of a violation of any condition of this Order, TWE shall promptly inform the Director in writing of (1) the nature of the violation, (2) the period in which the violation has been in existence, and (3) the actions that TWE proposes to take with respect to the violation.

(c) By April 30 of each year, TWE shall submit to the Director a statement to the effect that no violation of this Order has occurred and that TWE has observed or performed every condition contained in this Order. In the event a violation has occurred and is continuing or if TWE has not observed or performed all of the conditions contained in this Order, it shall specify the nature and period of the violation and what action TWE has taken or proposes to take with respect to the violation.

7.4 Annual Financial Statements

(a) By April 30 of each year, TWE shall submit to the Director its annual financial statements for the preceding calendar year. The financial statements shall include a balance sheet, an income statement, and a statement of cash flows. Each financial statement shall be prepared in accordance with generally accepted accounting principles consistently applied. The financial statements shall be represented in sufficient detail to allow the analysis of its System operation on a stand-alone basis.

(b) The financial statements required to be furnished pursuant to paragraph (a) above shall be accompanied by a statement showing the basis for computing and the amounts paid by TWE or any subsidiary to its parents, affiliates, subsidiaries, general partners or any person for management fees and fees in the nature of general and administrative allocations.

7.5 Other Reports

In addition to the reports required to be submitted under this Order, TWE shall submit to the Director all other reports at the time required by applicable State and federal law, rules and regulations.

7.6 Change in Ownership

Any change in the general ownership of five percent (5%) or more of TWE shall require the prior approval of the Director.

**Section Eight
Collateralization of System Assets**

8.1 Collateralization of System Assets

(a) In the event the assets of the System will be or has been pledged by TWE as collateral for additional borrowing or other purposes, TWE shall notify the Director in writing no later than 15 days after the closing of the loan or credit facility. TWE shall inform the Director of the parties to the loan agreement or credit facility, the total amount borrowed, the term of loan, any restrictions or limitations on the borrowed amount, and any other information the Director may require.

(b) During the term of the franchise, TWE is not required to seek pre-approval of any change in an existing loan agreement or credit facility which encumbers or pledges the assets of the System; provided, however, that the Director has the right to pre-approve any financing plan during a franchise renewal or transfer proceeding. Within 30 days after closing, TWE shall notify the Director in writing of changes to any existing loan agreement or credit facility or any new loan agreement or credit facility. The Director shall have the right to request further information or to determine that the change(s) to the loan agreement or credit facility is not in the interest of the continued financial viability of the system and to require corrective measures if necessary.

(c) Notwithstanding any provision to the contrary, in the event TWE receives notice indicating that it is in default under any of its loan agreements, TWE shall (1) promptly notify the Director in writing of such event, (2) describe in sufficient detail the nature of default and TWE's actions to cure such default, and (3) promptly notify the Director in writing of the final resolution of such default.

**Section Nine
Subscriber Service**

9.1 Customer Service Office

(a) For Service Areas within the island of Maui, TWE shall maintain and operate within its Service Areas at least one customer service office to accept payments from Subscribers, returns of equipment, and to receive and resolve all complaints including without limitation, those regarding service, equipment malfunctions, or billing and collection disputes. TWE shall maintain a staff adequate to provide such services in a timely and efficient manner.

(b) For Service Areas within the islands of Molokai and Lanai, TWE shall provide appropriate personnel for customer services at least two full days per week effective as of October 1, 1999. The function of the customer service office shall be as

described in paragraph (a) above. Scheduling of days per week may be coordinated with TWE's technical service personnel for those islands. Except to the extent provided in this paragraph (b), nothing herein shall be deemed to diminish or eliminate TWE's responsibilities and obligations with respect to telephone service and service repairs as provided in sections 9.2 and 9.3 hereof, respectively.

(c) For each customer service office, TWE shall implement an operating policy for the optimum number of days per week and hours per day of operation (excluding legal holidays) that will be most convenient for its Subscribers.

9.2 Telephone Service

(a) TWE shall have a publicly listed local customer service telephone number which shall be open for telephone business for at least ten (10) hours each weekday and for at least six (6) hours on Saturdays as determined by TWE to be most convenient for its Subscribers. The customer service telephone number shall also be used for Subscribers' repair service matters. At all other times, TWE shall have at a minimum an answering service to take calls.

(b) Within 30 days of a request by the Director, TWE shall submit to the Director all available information with respect to the adequacy of its telephone response capability including the following matters:

- (1) The average length of time, which it takes a human operator to answer a Subscriber telephone call during peak times;
- (2) The number of abandoned telephone calls to subscriber service telephone numbers during peak times;
- (3) The number of busy signals received by callers during peak times; and
- (4) The effectiveness of any new computer equipment in decreasing response time.

(c) The Director may require TWE to perform further analyses of its telephone service and to make such information available to the Director. Based upon such review, the Director may require TWE to improve its telephone service.

9.3 Installation and Repair Service

(a) TWE shall provide installation service for at least eight hours each weekday and Saturdays, except for legal holidays. The specific hours of service shall be determined by TWE to be most convenient for its Subscribers.

(b) TWE shall provide repair service for at least eight (8) hours each week day and Saturdays. At all other times, TWE shall have at a minimum an answering service to take calls and a technician on call to respond to after hour emergencies.

9.4 Compliance

Notwithstanding any provision to the contrary, TWE shall comply with all applicable customer service standards prescribed by the State and the Federal Communications Commission.

Section 10 Modification

10.1 Petition for Modification

(a) No provision of Order No. 241 shall preclude TWE from petitioning the Director for a modification of any provision of Order No. 241 for any reason including, but not limited to, the following: (1) the emergence of increased competition to the cable services offered by TWE; or (2) underutilization of access facilities and equipment. The Director may, in the Director's sole discretion, issue an appropriate modification of Order No. 241.

(b) In determining any modification of Order No. 241, the Director shall take into account the geographic, topographic, and economic characteristics of the Service Area, the economics of providing cable service to Subscribers and any other matters necessary to ensure that the terms and conditions upon which cable service is provided are fair to the public and TWE.

Section Eleven Termination

11.1 Cumulative Termination Rights

The termination provisions set forth in this section 11 shall be in addition to and not in derogation of any other rights or remedies the Director may have with respect to the subject matter of this Order.

11.2 Six Month Termination

(a) If any court, agency, commission, legislative body, or other authority of competent jurisdiction: (1) declares any part of section 3 (System Upgrades), section 4 (Public, Educational and Governmental Access), or section 5 (Networks) of these terms and conditions invalid or (2) requires or allows TWE either to perform any act which is inconsistent with any provision of such sections or cease performing any act required by any provision of such sections, then at the option of the Director the term of the franchise shall terminate six months from the date of such event.

(b) Notwithstanding paragraph (a) above, in no event shall the franchise be terminated under said paragraph prior to December 31, 2000.

(c) The provisions of paragraph (a) above shall be suspended for such period of time as TWE may elect to voluntarily perform its obligations under such sections; provided that TWE provides prior written notice to the Director of such voluntary performance.

11.3 New Franchise Application Not Excluded

In the event that TWE's franchise is terminated pursuant to section 11.2 hereof, nothing herein shall prevent TWE from applying for a new franchise.

Section Twelve Miscellaneous Provisions

12.1 Headings

The headings or titles of paragraphs and sections contained in these terms and conditions are to facilitate reference only and shall not in any way affect the construction or interpretation hereof.

12.2 Successors

All of the provisions of Order No. 241 and these terms and conditions shall apply to TWE and its permitted successors and assigns.

12.3 Notices

All required notices to the Director under Order No. 241 shall be made in writing and shall be submitted to the Cable Television Administrator, 1010 Richards

Street, Honolulu, Hawaii 96813 or at such location as may otherwise be specified by the Director.

12.4 Leased Commercial Access

Consistent with the Cable Act, on or before November 30, 1999, TWE shall file with the Director and implement a published schedule of terms, conditions, and charges for the leasing of the System Channels for commercial use.

12.5 Laws

TWE, its employees, and agents, shall be familiar with all federal, State, and local laws, ordinances, rules and regulations that in any manner affect the System. If TWE discovers any provision in the plans, specifications, orders or documents which is contrary to or inconsistent with any such law, ordinance, rule or regulation, TWE shall promptly report it to the Director in writing. TWE, its employees, and agents, shall comply with all applicable federal, state, and local laws, and rules and regulations issued pursuant thereto, and shall indemnify the State against any loss, liability or damage occasioned by reason of a violation of this section by TWE and its officers, employees and agents.

12.6 Performance

The failure of the Director or the State at any time to require performance by TWE of any obligation or condition of this Order shall in no way affect the right of the Director or the State to enforce the same. The waiver by the Director or the State of any breach of any term or condition of this Order shall not be taken or held to be a waiver of any succeeding breach of such term or condition or as a waiver of the term or condition itself.

12.7 Hold Harmless

TWE shall save and hold the State and its officials, agents, and employees free and harmless from any loss, expense or damage to person or property arising out of or resulting from any provision or requirement of the franchise or exercising its rights or performing its duties under this franchise.

12.8 Waiver

The Director reserves the right to waive any condition of this Order for good cause.

12.9 **Authority**

The State, from time to time, may adopt or issue such rules, orders or other directives governing TWE as it shall find necessary or appropriate in the exercise of its police power. The Director, from time to time, may issue such orders governing TWE as the Director shall find reasonably necessary or appropriate pursuant to and in furtherance of the purposes of this Order. The Director's authority shall not be used in a manner inconsistent with the provisions of this Order. Further, any action to be taken by the Director regarding this Order shall be taken in accordance with the applicable provisions of federal or state law, as said law may be amended throughout the term of this Order. TWE shall comply with all rules, regulations or orders lawfully binding upon it or other directives issued pursuant to this Order.

12.10 **Test Results**

As soon as available, but in no event more than 30 days after the date of the test, TWE shall submit to the Director the annual test results from the Federal Communications Commission Cumulative Leak Index signal leakage and aeronautical offset requirements test.

12.11 **Audit**

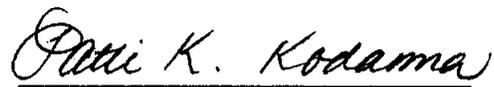
The Director may, in the Director's sole discretion, require that TWE submit to an audit by the Director's accountants. If an audit of TWE results in disclosure of cross-subsidization between cable and noncable services, or unpaid fees or payments required by this Order No. 241, statute or rules, the Director may require TWE to pay the full cost of the audit, and may take any other action deemed necessary or appropriate.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 241 was served upon the following parties at the address shown below by mailing the same, postage prepaid, on this 10th day of May 1999.

JOHN T. KOMEIJI, ESQ.
BETH K. FUJIMOTO, ESQ.
Watanabe, Ing & Kawashima
First Hawaiian Center, 23rd Floor
999 Bishop Street
Honolulu, Hawaii 96813

For Applicant Time Warner Entertainment Company, L.P.


Patti K. Kodama
Patti K. Kodama
Secretary